**SUPREME COURT OF INDIA**

Cine Exhibition Pvt. Ltd.

Vs.

Collector, District Gwalior

(K.S.Radhakrishnan and Dipak Misra JJ.)

04.01.2013

**ORDER**

1. These applications have been preferred under Order XVIII Rule 5 of the Supreme Court Rules, 1966 (for short 'the Rules) against the order of the Registrar dated 28.8.2012, alleging that the applications under Order XVIII Rule 5 of the Rules lodging the applications for clarification/modification of the Judgment dated 11.1.2012 of this Court in Civil Appeal Nos.281-282 of 2012 cannot be sustained in law. Applications for clarification/modification were filed on 21.2.12 seeking the following reliefs:

> a) Clarify/modify the observations contained in paragraphs 21 and 22 of the Judgment dated 11.1.2012 in view of the Notifications being produced by the Applicant herein along with the present application specially Notification dated 20.9.1965 issued by the State Government in exercise of powers under Section 52 of the Madhya Pradesh Town Improvement Trusts Act, 1960;
>
> b) Clarify/modify operative directions in the Judgment dated 11.1.2012 by which it has been held that the Gwalior Development Authority did not have authority or power to execute the lease in favour of the applicant herein;
>
> c) Direct the Appellant to produce before this Hon'ble Court the official records in respect of Scheme 2-B framed by the then Gwalior Improvement Trust including the Notifications and orders issued by the State Government in respect thereto photocopies of some of which are being produced along with the present applications; and
>
> d) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case."

Applications were rejected holding those applications filed would amount to seeking review of the Judgment and order passed by this Court on 11.1.2012. It was noticed that on the pretext of application for clarification/modification, applicant, in fact, sought nothing but recalling of the Judgment and order dated 11.1.2012 and substitution of the directions contained therein which, according to the Registrar, would amount to a prayer for reviewing the Judgment. Applications were, therefore, rejected placing reliance on the Judgment of this Court in Delhi Administration v. Gurdip Singh Urban and others (2000) 7 SCC 296.

2. Dr. Rajeev Dhawan, learned senior counsel appearing for the applicants submitted that the respondent-State of Madhya Pradesh had suppressed various documents which had substantial bearing on the outcome of the appeals. According to the learned senior counsel the following are some of the documents which were suppressed from this Court:

i) "Gazette Notification dated 27th September, 1963 formulating Housing Scheme under Section 46 of the Madhya Pradesh Town Improvement Trust Act, 1960 (Act of 1960).

ii) Gazette Notification dated 4th October, 1963 for Housing Schemes

iii) Details of the Acquisition of land and structure of village Ghospura and Mehra (Annexure R-1/3)

iv) Gazette Notification under Section 52(1)(s) of the Act of 1960 sanctioning the Scheme"

3. Learned senior counsel submitted that the only argument urged before the Bench was that since the property in question was Government land which had not been transferred by it to Gwalior Development Authority, the authority could not have dealt with such land by executing a lease which had been in favour of the applicants. Learned senior counsel submitted that various statements made by the State were couched with malice, fraud and material suppression of facts. Consequently, it was stated that the Registrar should have entertained the applications for modification/clarification and were wrongly lodged.

4. We fully endorse the view expressed by the Registrar that the prayers made in the applications would clearly fall in the realm of an application for review of the

Judgment of this Court dated 11.1.2012 on the ground of fraud and material suppression of documents and there is no question of clarification/modification of the Judgment of this Court dated 11.1.2012.

5. We are of the view that the practice of overcoming the provision for review under Order XL of the Rules by filing an application for re-hearing/ modification/ clarification has to be deprecated. Registrar of this Court earlier in an application for re-hearing took the same stand in the year 1981. This Court dismissed a Criminal Appeal No.220 of 1974 on 3.4.1981. Appellant therein filed an application for re-hearing of the appeal on 20.4.1981. The counsel was informed by the Registry that since appeal had been disposed of after hearing the counsel for the parties, no application for re-hearing would lie and, if he so advised, could file a review petition under the Rules. Consequently, the application was not registered. The order of the Registrar is reported in Sone Lal and others v. State of Uttar Pradesh (1982) 2 SCC 398.

6. The above mentioned order of the Registrar was later endorsed by this Court in Delhi Administration v. Gurdip Singh Uban and others (2000) 7 SCC 296. In that case Civil Appeal Nos.4656-57 of 1999 were allowed by a two Judge Bench Judgment of this Court reported in Delhi Administration v. Gurdip Singh Uban (1999) 7 SCC 44 and the appeals of Delhi Administration and Delhi Development Authority were allowed. The appellant in Civil Appeal No.4656 of 1999 was the Delhi Administration while the appellant in CA No.4657 of 1999 was Delhi Development Authority. After the appeals were allowed by this Court on 20.8.1999, Review Petition Nos.1402-03 of 1999 were filed in the two appeals by Gurdip Singh Uban and they were dismissed in circulation by a reasoned order on 24.11.1999. Another Review Petition No.21 of 2000 filed by another person was not listed on that date. IA No.3 of 1999 was later listed along with IA Nos.45 filed by Gurdip Singh Uban on 23.12.1999. Gurdip Singh Uban, it may be noted had filed IA Nos.45 in spite of dismissal of his review petition on 24.11.1999. IA Nos.45 were listed before the Court and a preliminary objection was raised stating that the applications couched as applications for "clarification", modification" or for "recall" could not be entertained once the review petitions filed by the applicant were dismissed. This Court examined the question in detail in Gurdip Singh Uban (supra) and held as follows:

> "16. At the outset, we have to refer to the practice of filing review applications in large numbers in undeserving cases without properly examining whether the cases strictly come within the narrow confines of

Rule XL of the Supreme Court Rules. In several cases, it has become almost everyday experience that review applications are filed mechanically as a matter of routine and the grounds for review are a mere reproduction of the grounds of special leave and there is no indication as to which ground strictly falls within the narrow limits of Rule XL of the Rules. We seriously deprecate this practice. If parties file review petitions indiscriminately, the time of the Court is unnecessarily wasted, even it be in chambers where the review petitions are listed. Greater care, seriousness and restraint is needed in filing review applications.

17. We next come to applications described as applications for "clarification", "modification" or "recall" of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.

Order XL Rule 3 states as follows:

"3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party...."

In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of "no hearing", we find that sometimes applications are filed for "clarification", "modification" or "recall" etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for "clarification" or "modification", — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What

cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in Sone Lal v. State of U.P.deprecating a similar practice.)

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for "clarification", "modification" or "recall" if the application is in substance one for review. In that event, the Court could either reject the application straight away with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.

19. What we have said above equally applies to such applications filed after rejection of review applications particularly when a second review is not permissible under the Rules. Under Order XL Rule 5 a second review is not permitted. The said Rule reads as follows:

"5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter."

20. We should not however be understood as saying that in no case an application for "clarification", "modification" or "recall" is maintainable after the first disposal of the matter. All that we are saying is that once such an application is listed in Court, the Court will examine whether it is, in substance, in the nature of review and is to be rejected with or without costs or requires to be withdrawn with leave to file a review petition to be listed in chambers by circulation. Point 1 is decided accordingly.

7. We are of the view that the ratio laid down in the above-mentioned Judgment squarely applies to the facts of this case as well. Generally an application for correction of a typographical error or omission of a word etc. in a Judgment or order would lie, but a petition which is intended to review an order or Judgment under Order XLVII Rule 1 of the Code of Civil Procedure and in criminal proceedings except on the ground of an error apparent on the face of the record, could not be achieved by filing an application for clarification/modification/recall or rehearing, for which a properly constituted review is the remedy. Review power is provided under Order XL of the Rules, which reads as follows:

"1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground

mentioned in Order XLVII, Rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

2. An application for review shall be by a petition, and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review.

3. Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.

4. Where on an application for review the Court reverses or modifies its former decision in the case on the ground of mistake of law or fact, the Court, may, if it thinks fit in the interests of justice to do so, direct the refund to the petitioner of the court-fee paid on the application in whole or in part, as it may think fit.

5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter."

8. Under Order XL of the Rules a review application has first to go before learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without an order giving an oral hearing or whether notice is to be issued to the opposite party. Many a times, applications are filed for clarification/modification/recall or rehearing not because of any clarification/modification is found necessary but because the applicant in reality wants a review and also wants hearing by avoiding circulation of the same in Chambers. We are of the view that a party cannot be permitted to circumvent or by-pass this circulation procedure and indirectly obtain a hearing in the open Court, what cannot be done directly, cannot be permitted to be done indirectly.

9. We are, therefore, of the view that the Registrar has rightly ordered for lodgment of the applications. However, we make it clear that the dismissal of these applications would not stand in the way of the applicants in filing review petitions with additional documents, stated to have been suppressed by the opposite side,

which would be dealt with in accordance with law. The interlocutory applications are dismissed.